



State of West Virginia
Office of the Attorney General

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Mr. Carl Sizemore
Chairman
State Fire Commission
1207 Quarrier St., 2nd Floor
Charleston, WV 25301

Dear Chairman Sizemore:

You have asked for an Opinion of the Attorney General pertaining to whether a municipality may grant limited law enforcement powers to its fire marshals. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions and advise upon questions of law, . . . whenever required to do so, in writing, by . . . any . . . state officer, board, or commission." To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your letter to the Attorney General's Office.

You explain that a question has arisen concerning the power of a municipality to authorize its fire marshals to effectuate arrests, obtain warrants, and exercise other limited law enforcement powers. This inquiry arises from the application of West Virginia Code § 29-3-5, which generally provides that "if a municipal or county fire ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Fire Code, it must be presented for review and approval and sanctioned for use by the West Virginia State Fire Commission." According to your letter, the Morgantown Fire Department requested that the State Fire Commission ("Commission") review and approve the City of Morgantown's fire code, which you assert includes more stringent provisions than those provided by the State Fire Code. Although you note that the Commission has already approved the City's request, you state that the unique circumstances of the issue—including the fact that this question has been answered differently throughout the State—merit clarification from the Office of Attorney General.

Your letter raises the following legal question:

Whether a municipality may grant limited law enforcement authority—including the power to arrest, obtain warrants, and temporarily detain individuals for investigatory purposes—to the municipality's fire marshals.

In general, a municipality has “only the powers granted to it by the legislature, and any such power it possesses must be expressly granted or necessarily or fairly implied or essential and indispensable.” Syl. Pt. 7, in part, *Calabrese v. City of Charleston*, 204 W. Va. 650, 515 S.E.2d 814 (1999) (quotations and citation omitted). Thus, a municipality does not possess “inherent power with regard to the exercise of the functions of [its] government.” See Syl. Pt. 3, in part, *Cooper v. City of Charleston*, 218 W. Va. 279, 624 S.E.2d 716 (2005) (quotations and citations omitted). See *City of Huntington v. Bacon*, 196 W. Va. 457, 465, 473 S.E.2d 743, 751 (1996) (“The City derives all of its power as well as its existence from the legislature.”). “If any reasonable doubt exists as to whether a municipal corporation has a power, the power must be denied.” Syl. Pt. 7, in part, *Calabrese*, 204 W. Va. 650, 515 S.E.2d 814.

Relevant here, the Legislature has granted every municipality the “plenary power and authority to provide for the prevention and extinguishment of fires.” W. Va. Code § 8-15-1. West Virginia Code § 8-15-1, entitled, “Power and authority of governing body with respect to fires,” reads in full:

The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires, and, for this purpose, it may, among other things, regulate how buildings shall be constructed, procure proper engines and implements, provide for the organization, equipment and government of volunteer fire companies or of a paid fire department, prescribe the powers and duties of such companies or department and of the several officers, provide for the appointment of officers to have command of fire fighting, prescribe what their powers and duties shall be, and impose on those who fail or refuse to obey any lawful command of such officers any penalty which the governing body is authorized by law to impose for the violation of an ordinance. It may give authority to any such officer or officers to direct the pulling down or destroying of any fence, house, building or other thing, if deemed necessary to prevent the spreading of a fire.

W. Va. Code § 8-15-1. As the Supreme Court of Appeals has said, “West Virginia Code § 8-15-1 (1990) establishes the authority necessary for a governing body to provide for the fighting of fires.” *Mabscott Volunteer Fire Dep’t, Inc. v. Houck*, 184 W. Va. 37, 39, 399 S.E.2d 180, 182 (1990); see also *Parsons v. Charleston Firefighters Civil Serv. Comm’n*, 190 W. Va. 500, 502, 438 S.E.2d 843, 845 (1993) (“The establishment, powers and duties of fire companies and fire departments are provided for in W. Va. Code, 8-15-1, *et seq.*”); *Shepherdstown Volunteer Fire Dep’t v. State ex rel. State of W. Va. Human Rights Comm’n*, 172 W. Va. 627, 634, 309 S.E.2d

342, 349 (1983) (“In West Virginia, volunteer fire departments are created and extensively regulated under our statutes.”).¹

The issue raised by your letter is whether the governing body of the City of Morgantown (the “City”) has the authority under West Virginia Code § 8-15-1 to grant fire marshals limited law enforcement powers. Specifically, the City would empower fire marshals and deputy fire marshals with the authority to “make arrests” of individuals charged with certain violations of the Morgantown City Fire Prevention Code, make warrantless arrests when the marshals themselves “witness . . . the perpetrations of these offenses, and to make “a limited detention of any persons suspected of the commission of these offenses for investigatory purposes.” In addition, the City would permit fire marshals and deputy fire marshals to seek and execute warrants for offenders of certain provisions of the City Fire Prevention Code.

We conclude that the City possesses the authority under West Virginia Code § 8-15-1 to enact the proposed changes, for several reasons. To begin, the City has been granted “*plenary power and authority* to provide for the prevention and extinguishment of fires.” W. Va. Code § 8-15-1 (emphasis added) (enacted 1969). “Plenary” means “complete in every respect; absolute; perfect; unqualified.” *Webster’s Third New International Dictionary of the English Language* 1739 (unabridged 1970). The use of the word “plenary” indicates that the legislative grant of authority to municipalities in the area of fire “prevention and extinguishment” is essentially unlimited, subject only to conflicting constitutional provisions and potentially other statutory provisions. *Accord* Syl. Pt. 1, in part, *State v. Yocum*, 233 W. Va. 439, 759 S.E.2d 182 (2014) (“The general powers of the legislature, within constitutional limits, are almost plenary.”).

Furthermore, the law enforcement powers sought for fire marshals reasonably contribute to the “prevention and extinguishment of fires,” as they are limited to specific violations of the City Fire Prevention Code. W. Va. Code § 8-15-1. “In the absences of any specific indication to the contrary,” courts give “words used in a statute will . . . their common, ordinary and accepted meaning.” Syl. Pt. 5, *Shaffer v. Fort Henry Surgical Assocs., Inc.*, 215 W. Va. 453, 599 S.E.2d 876 (2004) (quotations and citations omitted). The word “prevention” means “the action of keeping from happening or rendering impossible an anticipated event or an intended act.” 7 *The Oxford English Dictionary* 446 (2d. 1989). “Extinguishment” means “the quenching (of fire).” 5 *The Oxford English Dictionary* 605 (2d. 1989). It is more than reasonable to conclude that empowering fire marshals to make arrests relating to the violation certain provisions of the City Fire Prevention Code—specifically, the provisions relating to malicious fires and obeying fire marshals—will help stop and put out fires.

You note in your letter that the statute enumerates a list of specific powers that come under a municipality’s “plenary authority” to provide for “the prevention and extinguishment of fires,” but that list does not affect this analysis. W. Va. Code § 8-15-1. One of the enumerated

¹ Addressing the scope of a statutory predecessor to West Virginia Code § 8-15-1, West Virginia Attorney General John G. Fox explained: “It is well settled that a municipal corporation may enact ordinances affecting the manner in which the inhabitants of a municipality are protected from fires, and the manner in which fires upon arising may be extinguished. This is a valid exercise of the police power of a municipality.” 47 W. Va. Op. Att’y Gen. 76 (1956).

powers listed in the statute—the authority of a municipality to “prescribe” the “powers and duties” of the “officers to have command of fire fighting” may be fairly read to provide for the authority to grant limited law enforcement powers to such “officers.” W. Va. Code § 8-15-1. Moreover, the list of specific powers in West Virginia Code § 8-15-1 is not exhaustive. The list is preceded by the phrase “among other things,” *see id.*, which indicates that the list is not limited by what is specifically enumerated in the statute. *See* W. Va. Code § 8-15-1; *accord Davis Mem’l Hosp. v. W. Va. State Tax Comm’r*, 222 W. Va. 677, 684, 671 S.E.2d 682, 689 (2008) (“[t]he term ‘includes’ in a statute is to be dealt with as a word of enlargement and this is especially so where . . . such word is followed by ‘but not limited to’ the illustrations given” (quotations omitted)). The list of enumerated powers is for illustration purposes and, by its varied nature, suggests that the Legislature intended to grant municipalities a broad scope of authority to fight fires.

In sum, we conclude that the City has authority under West Virginia Code § 8-15-1 to grant the contemplated law enforcement powers to its fire marshals. We do not address in this Opinion the effect, if any, of other statutory or constitutional provisions on the City’s authority under West Virginia Code § 8-15-1.

Sincerely,

A handwritten signature in blue ink that reads "Patrick Morrisey" followed by a stylized monogram "JSL".

Patrick Morrisey
Attorney General

Elbert Lin
Solicitor General

J. Zak Ritchie
Assistant Attorney General